No. 530

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, UAW-CIO,
Appellant,
vs.
WISCONSIN EMPLOYMENT RELATIONS BOARD and KOHLER CO., a Wisconsin corporation,
Appellees

ON APPEAL FROM THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE APPELLANT

HAROLD A. CRANEFIELD,
Attorney for Appellant,
8000 East Jefferson Avenue,
Detroit 14, Michigan.

MAX RASKIN,
WILLIAM F. QUICK,
1801 Wisconsin Tower,
Milwaukee 3, Wisconsin;
KURT L. HANSLOWE,
REDMOND H. ROCHE, JR.,
8000 East Jefferson Avenue,
Detroit 14, Michigan,
Of Counsel for Appellant.

Interstate Brief & Record Co., 642 Beaubien St., Detroit 26, Michigan

50

INDEX

AUTHORITIES CITED

Cases: Page

Cases (continued): Page

Federal Statutes:

State Statutes:

Miscellaneous:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 530

UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, UAW-CIO,
Appellant,
vs.
WISCONSIN EMPLOYMENT RELATIONS BOARD and KOHLER CO., a Wisconsin corporation,
Appellees

ON APPEAL FROM THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The opinion of the Supreme Court of Wisconsin (R. 21) is reported at 269 Wis. 578, 70 N. W. 2d 191. The opinions of the Circuit Court (R. 13) and of the Wisconsin Employment Relations Board (R. 7) are not reported.

JURISDICTION

The Supreme Court of Wisconsin, on May 3, 1955, entered its opinion and judgment (R. 19). A timely motion for rehearing filed on May 21, 1955, was denied on June 28, 1955. Notice of appeal to this Court was filed in the Wisconsin Supreme Court on the 23rd day of September, 1955. The appellant's Jurisdictional Statement was filed November 21st, 1955. This Court noted probable jurisdiction on January 30, 1956. The jurisdiction of the Supreme Court to review this decision is conferred by Title 28, U. S. C. Section 1257(2), since the validity of a state statute on grounds of repugnancy to a law and the Constitution of the United States is drawn in question.

QUESTIONS PRESENTED

1. Whether the State of Wisconsin, in view of this Court's admonition (in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468) that "a State may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statutes", may, in an unfair labor practice proceeding under its labor statute, the Wisconsin Employment Peace Act, enjoin conduct of a kind which may be an unfair labor practice under the National Labor Relations Act, as amended, and which the National Labor Relations Board alone is empowered to investigate and, if proven, to prevent.

2. Whether the State of Wisconsin, under its own labor statute, may regulate the kind of conduct of a labor organization which may be an unfair labor practice under the National Labor Relations Act, as amended, where the National

Labor Relations Board at the time of the State proceeding had asserted and was asserting jurisdiction in representation and unfair labor practice proceedings under the federal statute over the same employer-union relationship, and where the conduct enjoined under the State act has also been pleaded by the employer, who filed the State complaint, in defense of an unfair labor practice complaint issued by the General Counsel of the Federal Board.

3. Whether the State of Wisconsin is not obligated to decline to take jurisdiction under its labor act over conduct of the kind which may be regulated by the National Labor Relations Act, as amended, until *after* a determination by the National Labor Relations Board that the particular conduct involved is not so regulated.

STATUTES INVOLVED

The pertinent statutory provisions appear in Appendices A and B, *infra*.

STATEMENT

The appellant, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, and its Local Union 833, were certified by the National Labor Relations Board as collective bargaining representative of all production workers of the Kohler Company on June 19, 1952. The certification followed a representation proceeding and election conducted by the National Labor Relations Board pursuant to Section 9 of the National Labor Relations Act, as amended. An earlier representation proceeding involving the same parties is reported at 93 N. L. R. B. 398.

On February 23, 1953, the appellant and its Local Union 833 UAW-CIO on behalf of the production workers of the Kohler Company executed a collective bargaining agreement which expired March 1, 1954.

Prior to January 1, 1954, pursuant to the requirements of Section 8 (d) of the National Labor Relations Act, as amended, notice was given to the Kohler Company of the intended termination of said contract as of March 1, 1954 (R. 21). The parties were unable to reach an agreement for a new contract and on April 5, 1954, the production employees of the Kohler Company went on strike and picketed the premises.

On April 15, 1954, the Kohler Company filed a complaint with the Wisconsin Employment Relations Board, charging appellant (and others) with unfair labor practices within the meaning of the Wisconsin Employment Peace Act, Wisconsin Statutes 1953, Ch. 111, subchapter 1 R. 1). The gist of the complaint was that appellant (and others) had engaged in mass picketing, obstruction of ingress to and egress from the plant, violence and threats of violence—all in contravention of the Wisconsin labor statute.

After hearing, which ended on May 19, 1954, the Wisconsin Employment Relations Board entered a so-called interlocutory order [which by the express terms of the Wisconsin statute is final in character and effect; Wisconsin Statutes, 1953, Section 111.07 (4)], finding appellant (and others) guilty of unfair labor practices within the meaning of the Wisconsin Employment Peace Act. The Board concluded that appellant (and others) had:

> "• • • violated Section 111.06 (2)(a) of the Wisconsin Statutes by picketing the domicile of persons desiring to work at the Kohler Company, and Section 111.06 (2) (f) of the Wisconsin Statutes by

hindering and preventing persons desiring to be employed by the Kohler Company by means of massed picketing and by means of obstructing and interfering with entrance to and egress from the plant of the Kohler Company and by obstructing and interfering with the free and uninterrupted use of the public roads, streets and highways" (R. 8).[1]

On August 30, 1954, the Circuit Court of Sheboygan County, Wisconsin entered an opinion (R. 13) on a petition by the Wisconsin Employment Relations Board dated May 25, 1954 (R. 5) for enforcement of and on a petition by appellant (and others) for review of the order. (The petition for review is *dehors* the record but noted in the opinions filed by both the Circuit and the Supreme Court.) The Court enforced the Board's order.

---

[1] On the basis of these findings the Wisconsin Board entered the following order:

"IT IS ORDERED that the Respondent Unions, their officers, members and agents immediately cease and desist from

1. Coercing and intimidating any person desiring to be employed by the Kohler Company in the enjoyment of his legal rights, intimidating his family, picketing his domicile, or injuring the person or property of such persons or his employe.

2. Hindering or preventing by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of lawful work or employment by any person desirous of being employed by the Kohler Company.

3. Obstructing or interfering in any way with entrance to and egress from the premises of the Kohler Company.

4. Obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways or private drives leading to the premises of the Kohler Company.

IT IS FURTHER ORDERED that the Respondent Unions, their officers, members and agents take the following affirmative action:

1. Limit the number of pickets around the Kohler Company premises to a total of not more than 200, with not more than 25 at any one entrance. Such pickets are to march in single file and to at all times maintain a space at least 20 feet in width at each entrance to the Kohler Company premises over which pickets will not pass and on which persons either on foot or in conveyance may freely enter or leave the premises without interference" (R. 9).

Appeal was taken to the Supreme Court of Wisconsin, which on the 3rd day of May, 1955, after consolidated hearing, affirmed both judgments (on the two petitions) of the Circuit Court for Sheboygan County. The Supreme Court of Wisconsin found, and appellee Kohler Company has conceded, that Kohler's operations affect commerce within the meaning of Section 2 (7) of the National Labor Relations Act, as amended. In addition, the state court took cognizance of the past and pending assertion of jurisdiction in representation and unfair labor practice proceedings by the National Labor Relations Board over the labor relations of Kohler Company (R. 21).

The Court below concluded that the action of the Wisconsin Board constituted a valid exercise of the State's police powers as against the assertion that the State was no longer authorized to enjoin under its labor act conduct of the kind which may be unfair labor practices under the National Labor Relations Act as amended. In addition, the Court disposed of a defense asserted by appellant that the Kohler Company on its part had acted wrongly (by having in its plant a supply of clubs, guns and tear gas) by stating that this should have been made the subject of a separate complaint to be filed with the Wisconsin Employment Relations Board (R. 30).. A motion for rehearing was denied on June 28, 1955.

In addition to the National Labor Relations Board representation proceedings previously mentioned, the National Labor Relations Board has continued to exercise its jurisdiction over the labor relations of the Kohler Company in the following several proceedings:

On charges filed November 2, 1951 and May 5, 1952 by individual employees and also on May 5, 1952, by an independent labor organization which later affiliated with

appellant, the National Labor Relations Board issued a consolidated complaint and, on April 12, 1954, filed a decision and order finding the Kohler Company guilty of unfair labor practices within the meaning of Section 8 of the National Labor Relations Act, as amended. *Kohler Company*, 108 N. L. R. B. 207. This decision was enforced on March 7, 1955, (rehearing denied April 7) by the United States Court of Appeals for the Seventh Circuit. *N. L. R. B. v. Kohler Co.*, 220 F. 2d 3 (C. A. 7).

Furthermore, on October 26, 1954, the National Labor Relations Board issued a further complaint charging the Kohler Company with unfair labor practices in connection with the present strike. The gist of the charges was that Kohler had refused to bargain, had discriminated against employees for exercising their rights under the Federal Act, and had engaged in other forms of forbidden interference (see Appendix C). The union claims, in particular, that the strike was *caused* and prolonged by the refusal to bargain. Thus the question of its picket line conduct is closely inter-related with the Company's conduct in this dispute. Hearings on this complaint, which is Case No. 13-CA-1780, commenced in February, 1955, and are continuing. Although no record of the current and continuing unfair labor proceeding by N. L. R. B. against Kohler Co. is included in the record in this appeal, that proceeding is a public record and we believe we may with propriety advise the Court that all of the acts and conduct from which appellant was enjoined by the Wisconsin Employment Relations Board are pleaded by appellee, Kohler Company, in defense of the National Labor Relations Board complaint and in justification for its own conduct charged as unfair labor practices under the National Labor Relations Act and that proof of all such acts and conduct has already been received by the Trial Examiner of the National Labor Relations Board and is presently part of the record in that continuing proceeding. Excerpts from the pleadings in N. L. R. B. case 13-CA-1780 are attached hereto as Appendix C.

SUMMARY OF ARGUMENT

I. The Wagner Act protected certain employee rights, and prohibited employer interference with these rights as unfair labor practices. It also provided centralized administrative machinery for preventing such employer unfair labor practices. The Taft-Hartley amendments to the Wagner Act added prohibitions against union unfair labor practices and confided the enforcement of these additional rules also to the National Labor Relations Board. The Wisconsin Employment Peace Act substantially duplicates the Taft-Hartley Act by setting forth employee rights and by prohibiting both employer and union unfair labor practices. It also provides administrative procedures similar to those contained in the Federal Labor Act. The Wisconsin Employment Relations Board in this case enjoined as unfair labor practices under the State Labor Act conduct affecting interstate commerce of the kind that has been held to be an unfair labor practice within the meaning the National Labor Relations Act. Wisconsin, thus, has sought to apply its own procedural and substantive law in a field which Congress has entered by establishing both substantive rules and a central administrative agency for the interpretation and enforcement of such rules. This is in direct conflict with the decisions of this Court holding that the federal procedure for preventing unfair labor practices is exclusive and, that, therefore, a state may not apply its own unfair labor practice remedy against conduct which may be an unfair labor practice under the federal act and that a state may not otherwise duplicate the exclusive federal unfair labor practice procedure. *Garner v. Teamsters Union*, 346 U. S. 485; *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468. These decisions take cognizance

of the fact that Congress in Section 10 (a) of the N. L. R. A., as amended has designated the National Labor Relations Board as the special tribunal to enforce the federal labor policy and has specified the precise method by which that agency may cede some of its power to the states. This Court has recognized in other decisions that the states may apply their own law and remedy only where either Congress has expressly authorized such application (as in Section 14 (b) of the Tart-Hartley Act; *Algoma Plywood and Veneer Company v. W. E. R. B.*, 336 U. S. 301) or the state remedy does not duplicate and is not in conflict with the federal remedy (*United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656). Barring these exceptions, however, the federal board is the *only* tribunal empowered, in the first instance, to determine whether or not conduct is prohibited as an unfair labor practice; and consequently, where conduct reasonably falls within the sections of the federal statute prohibiting unfair labor practices, as is the case here, the state tribunals must decline jurisdiction.

II. Factually, this case is substantially similar to *Allen-Bradley Local 1111 v. W. E. R. B.*, 315 U. S. 740. But the *Allen-Bradley* case was decided before the Federal Act had been amended to prohibit union unfair labor practices. Thus, the fundamental principle for which *Allen-Bradley* stands, namely, that the states continue free to regulate conduct not regulated by the Federal Act, is not applicable here. Insofar as the *Allen-Bradley* case has been cited by this Court since the Taft-Hartley amendments for the right of the states to continue exercising historic powers over the public peace, it is also inapplicable. For, while the states may continue free to enforce criminal laws of general applicability to prohibit disturbances of the peace and punish

violence, they may not enforce their own policy relating to the proper method of conducting strikes and other labor controversies. And it is clear that the Wisconsin Employment Peace Act represents the State's labor policy, closely duplicating both in substance and procedure, the national labor policy, and it is not primarily general police regulation of breaches of the peace or traffic. The case of *UAW-AFL v. W. E. R. B.*, 336 U. S. 245, also is a ruling to the effect that a state may continue to regulate conduct not protected or prohibited by the Federal Labor Act. But neither the *Allen-Bradley* nor the *Briggs-Stratton* case support state jurisdiction under a state *labor* statute over conduct which is *also* regulated by the Federal Labor Act.

III. Appellant is not claiming immunity in this case and is not arguing that it is beyond the authority of local government to proscribe the type of conduct here involved under laws of general applicability, regulating all persons, including unions, as well as "unorganized private persons". Indeed the Wisconsin Employment Peace Act expressly preserves the pursuit of appropriate legal and equitable relief, apart from and in addition to the special sanctions and additional restrictions it purports to apply with respect to labor controversies. The question is not whether Wisconsin may apply traditional sanctions based on historic measures generally applicable to everyone, but whether the State may superimpose its own special unfair labor practice remedy upon the exclusive federal unfair labor practice remedy. We think the answer to this question is "No" in view of the statutory language and this Court's decisions.

IV. We think the answer to this question is "No" also in view of the legislative history preceding the enactment of the Taft-Hartley amendments. That history reveals

that Section 8 (b)(1), the provision of the Taft-Hartley Act upon which our claim of conflict rests, resulted from a Congressional concern over the supposed failure of local law enforcement in labor dispute contexts. It could be argued that federal enactment in this area replaces state regulation of violence in labor disputes. Whatever the merits of that contention, it is evident that, at most, Section 8 (b)(1) complements local enforcement of state criminal laws. Thus, opponents to the measure in the Senate pointed out that federal prohibition of union coercion was unnecessary because such conduct was already subject to state criminal penalties. On the other hand, the proponents argued that the peace officers charged with enforcing such generally applicable criminal laws would be encouraged by the addition of a federal administrative procedure dealing, in part with the same ground. Thus, the legislative history appears to give some support to the application of *two* remedies for the same conduct. But, Wisconsin here is arguing for *three* remedies, namely, the federal unfair labor practice remedy, the state unfair labor practice remedy, and such other legal or equitable relief as might be appropriate and available. But neither the opponents nor proponents of Section 8 (b)(1) assumed that state labor relations procedure *and* federal labor relations procedures would be imposed on the existing criminal law, and the repeated reference in the debates to existing state law and the police powers of the state, which would be duplicated by Section 8 (b)(1), were references to the general state criminal law, not to state labor relations acts.

V. The possibility of conflict between state and federal regulation provides the foundation for the pre-emption doctrine. In this case, the possibility of conflicting jurisdiction has been realized. The National Labor Re-

lations Board has asserted jurisdiction over the Kohler Company in representation and unfair labor practice proceedings. Indeed, the very conduct involved in the State proceeding is also currently the subject of a National Labor Relations Board proceeding. N. L. R. B. has issued a complaint on charges filed by appellant alleging unfair labor practices on the part of Kohler Company. Hearings on this complaint are continuing. Thus, both the federal and state labor relations board are seeking to exercise jurisdiction over the same controversy. In addition, the company, in defending in the federal proceeding, is asserting the same conduct of the union over which it complained in the Wisconsin proceeding. Thus, Kohler has itself illustrated that the Federal Act is an integrated whole and that one cannot separate out part of the conduct of one of the parties to a labor dispute and deal with it separately without destroying the Congressional scheme for the regulation of such disputes. Conduct on picketlines, is, in part, determined by an employer's conduct in bargaining. Conversely, an employer's bargaining strategy and decisions may be affected by picketline conduct. All these issues are necessarily inter-related and Congress has enacted a statute under which an entire such controversy can be taken in hand. Wisconsin, too has such a statute. But it is clear that the Wisconsin board cannot take hold of the whole controversy. Even if appellees are correct in their contentions, only the single issue of union coercion can be decided by the Wisconsin board. The other issues in the dispute, their inter-relationships, and indeed, the factual re-determination of the coercion issue itself are all subject to N. L. R. B. adjudication. We do not think the kind of one-sided and truncated adjudication entailed necessarily in appellees' position can be permitted to stand in the face of the Federal Act.

ARGUMENT

I.

Wisconsin acted beyond its authority when it sought:

(A) to enjoin under its own labor act the kind of conduct which the National Labor Relations Board has exclusive powers to investigate and prevent; and

(B) to duplicate in a state administrative unfair labor practice proceeding the exclusive federal procedure and remedy for investigating and regulating such conduct.

Wisconsin here has sought under its labor act to take hold of one single phase of a complex labor dispute—namely, alleged coercive union conduct. By enjoining such conduct it has impinged upon the special procedure designated by Congress for investigating and preventing such conduct. The State has also, by singling out but one phase of a complex labor dispute (it being clear it has no authority to prevent any *other* union and *any* employer unfair labor practices under *Plankinton Packing Company v. W. E. R. B.*, 338 U. S. 953 and *Garner v. Teamsters Union*, 346 U. S. 485) undermined the comprehensive Congressional scheme for the regulation of such labor disputes. For, while the original National Labor Relations Act (usually referred to as the Wagner Act) merely protected certain union and employee activities and prohibited unfair labor practices and provided a centralized administrative machinery for the protection of union and employee rights against such employer practices, the federal government by enacting the Taft-Hartley amendments, established a much more comprehensive scheme of regulation embodied in the Labor Management Relations Act,

1947, 29 U. S. C. 141 ff. That act not only, for the first time, laid down a substantive federal prohibition against union unfair labor practices; as was said in *Garner v. Teamsters Union*, 346 U. S. 485, 490, it also confided the "primary interpretation and application" of these new rules to the "specific and specially constituted tribunal" which had previously administered the rules against employer unfair practices. The "centralized administration of specially designed procedures" which this Court said in the *Garner* case "was necessary to obtain uniform application * * * and to avoid these diversities and conflicts likely to result from a variety of legal procedures and attitude toward labor controversies" was made applicable to *both* employer and union activities. In particular, Section 7 (29 U. S. C. 157) was amended to state the right of employees to refrain from concerted activity as well as their right to engage in such activity. And a new Section 8 (b)(1) [29 U. S. C. 158 (b) (1)] was enacted which provided that it was an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their Section 7 rights.

The Wisconsin labor statute, the Employment Peace Act, substantially duplicates these features of the federal law. Wisconsin Statutes, 1953, Chapter 111, Sub-chapter I; see Appendix A *infra*. This statute sets forth employee rights (in Section 111.04) and regulates both employer and union unfair labor practices (Section 111.06). Sections 111.06 (2)(a) and (f), in particular largely duplicate Section 8 (b)(1)(a) of the National Labor Relations Act, as that provision has been interpreted by the National Labor Re-

lations Board.[2] The State Act also provides administrative procedures, similar to those contained in the federal labor statute, by which the State's labor policy is to be enforced.

The Wisconsin Board in this case sought to enjoin conduct of the appellant as unfair labor practices under the state labor act. That conduct, as found by W. E. R. B., consisted of mass picketing, prevention of egress from and ingress to the plant, threats and intimidation of employees, picketing of domiciles of employees, and obstruction of traffic. These unfair labor practices under the Wisconsin labor statute are the kinds of conduct that have been held to be unfair labor practices within the meaning of and under the National Labor Relations Act, as amended, and appellant almost certainly would have been prevented from committing them had charges been filed

---

[2] The relevant statutory provisions are:

Section 111.04:

"111.04 *Rights of employes.* Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities."

Section 111.06 (2) (a) (f):

"(2) It shall be an unfair labor practice for an employe individually or in concert with others:

(a) to coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

* * *

(f) To hinder, or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

with and proven before the federal board.[3] One of the asserted purposes of Section 8 (b)(1)(a) was to outlaw "mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employment". *1 Legislative History of the Labor Management Relations Act*, 1947, 297. Appellant's conduct, as found by W. E. R. B., was thus of the kind which the National Labor Relations Board is empowered to investigate and concerning which it has exclusive powers to determine its legality or illegality as unfair labor practices. Had the conduct been proven to the satisfaction of the federal board, that board's procedures, which include temporary relief upon issuance of the Board's complaint and prior to final adjudication, and lead to cease and desist orders, were applicable and thus could and should have been invoked.

Wisconsin in this case has thus sought to apply its own procedural and substantive law in an area which Congress has entered by providing both substantive rules and charging a central and expert agency with their interpretation and enforcement. In so doing, Congress has indicated its intent to provide the benefits of an orderly system of adjudication by an expert board, thereby avoiding conflicts and confusion resulting from exercise of varying local authority in the solution of what, in the eyes of Congress,

---

[3] *Cory Corporation*, 84 NLRB 972 (mass picketing); *Mercury Mining and Construction Corporation*, 96 NLRB 1389 (prevention of ingress and egress); *Irwin-Lyons Lumber Co.*, 87 NLRB 54 (threats and intimidation); *Mine Workers Local 1282*, 112 NLRB No. 24 (interference with traffic); *Perry Norwell Co.*, 80 NLRB 225 (intimidating employee at domicile); see also *Smith Cabinet Mfg. Co.*, 81 NLRB 886; *Abe Meltzer, Inc.*, 108 NLRB 1506; *Tungsten Mining Corp.*, 106 NLRB 903; *United Mine Workers, District 2*, 103 NLRB 1572; *Sunset Line and Twine Co.*, 79 NLRB 1487; *North Electric Mfg. Co.*, 84 NLRB 136; *Colonial Hardwood Flooring*, 84 NLRB 563; *Bechtel Corp.*, 108 NLRB 1070; *The Englander Co., Inc.*, 108 NLRB 38; *United Electrical Workers*, 106 NLRB 1372; *Union Supply Co.*, 90 NLRB 436; *Local 6281, United Mine Workers*, 100 NLRB 392; *Bell Aircraft Co.*, 105 NLRB 755; *Progressive Mine Workers, International Union v. NLRB*, 187 F. 2d 298 (C. A. 7), enf. 89 NLRB 1490.

was an interstate and national problem. Appellant has been deprived of the right to have its conduct investigated and evaluated by this central and expert tribunal established by Congress. Further, we have been deprived of the right to have this conduct examined as part of and in its relation to a complex labor dispute that includes claimed unfair practices by Kohler. For it is clear that the Wisconsin board has no authority to engage upon such comprehensive investigation and regulation. Not even appellees are asserting such sweeping powers on the part of the State but are rather saying that they are free to single out one particular phase of a complex situation for regulation. The essential lack of wisdom and fairness of such an approach was poignantly expressed by the Circuit Judge when he said, on reviewing the W. E. R. B. order:

> "I personally regret that the inquiry before this Court in these proceedings is so narrow" (R. 14).[4]

---

[4] The Circuit Judge continued: "I would much prefer if this Court had authority in law to apply equitable principles as would be the situation if the complainant here had seen fit to invoke the equity jurisdiction of this Court in seeking a temporary injunction and eventually a permanent injunction. Reasonable minds may differ and disinterested, impartial persons may not agree to the seriousness of the acts which the Board has found constitute unfair labor practice. This Court has no right to make inquiry as to the fairness or unfairness of the original demands of the Union as made early in the year, February, 1954, or maybe preceding the expiration of the contract in February, 1954, maybe the demands were in some form made in January of 1954. The Court has no right to comment upon the soundness of the Company's position as to the demands of the two unions. The wisdom or lack of wisdom in calling the strike is not for this Court to decide. This Court has no right now to even make any observations as to the realistic views or attitudes of either the Company, who is the complainant here, or the two unions, nor in any type of critical language make any type of findings, even though it be dicta, as to the character and the tempo and the type of settlement negotiations. *The Court has no right to pass upon the good faith or lack of good faith of any parties to this dispute even though the Court may have its own opinion with reference to all of these subjects.*" (Emphasis added.)

This should be contrasted with NLRB treatment of picketline conduct *in relation* to employer unfair practices. *NLRB v. Thayer*, 213 F. 2d 748 (CA 1). For NLRB treatment of mass picketing, see for example, *District Council, AFL*, 95 NLRB 969, 999.

The Court is referred to Section V of this Argument for a more detailed description of the evils resulting from such piecemeal regulation of labor disputes as Wisconsin is here proposing.

This case therefore presents an occasion for invoking the principles of federal preemption under the Commerce and Supremacy Clauses of the Constitution. These principles, generally stated, are that where Congress has taken a field in hand and indicated the substantive and adjective law for its regulation, the states may not regulate the same field in duplication or complementation of, or in opposition to, the federal law.

This Court has given these general principles concrete application in the labor relations field; and it need not look beyond precedent to reverse the decision below in this case. Indeed, it need not even apply that precedent to the fullest for appellant to prevail. One of the principles emerging plainly from the cases decided by this Court is that "A State may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statutes." *Weber v. Anheuser-Busch*, 348 U. S. 468, 475. This is what Wisconsin here sought to do. Beyond this, the Court has held that a state may not, on any policy, duplicate the exclusive federal unfair labor practice procedure and remedy to prevent conduct subject to federal regulation.[8] The conclusion of this Court is that

---

[8] Thus, in *Weber v. Anheuser-Busch*, 348 U. S. 468, a state court injunction grounded upon a state anti-monopoly statute was set aside as duplicating and possibly conflicting with the federal unfair labor practice remedy. In *General Drivers Union v. American Tobacco Co.*, 348 U. S. 978, this Court set aside *per curiam* an injunction restraining conduct characterized by the state court as a violation of the constitutional, common, statutory and criminal law of Kentucky. *Drivers Union v. American Tobacco Co.*, 264 S. W. 2d 250.

Congress intended the *procedures* for the prevention of unfair labor practices to be *exclusive* and therefore intended to prohibit duplication of this exclusive remedy with regard to such conduct by the states. It would be presumptuous to review in detail the history of this Court's pre-emption decisions in the labor relations field in view of the detailed summary contained in *Weber v. Anheuser-Busch, supra.* Suffice it to say here that these decisions of the Court have recognized the pre-emptive and exclusive character of the federal regulation, as to its protective and prohibitive, as well as procedural features.

The crucial statutory language may be found in Section 10 (a) [29 U. S. C. 160 (a)] of the Taft Hartley Act.[6] This language accomplishes two things. It establishes, as this Court has frequently recognized, that the unfair labor practice procedures of the federal Board are to be the only remedy for preventing unfair labor practices listed in the statute. Furthermore, Congress indicated a method of cession under which the states could acquire jurisdiction otherwise belonging to the federal board. The significance of this Section 10 (a) has been repeatedly recog-

---

[6] We quote it here in full:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

nized by this Court. Thus, in *Amalgamated Association v. W. E. R. B.*, 340 U. S. 383, 397-398:

> "When it amended the Federal Act in 1947, Congress was not only cognizant of the policy questions that have been argued before us in these cases, but it was also well aware of the problems in balancing state-federal relationships which its 1935 legislation had raised. The legislative history of the 1947 Act refers to the decision of this Court in *Bethlehem Steel Co. v. New York Labor Board*, 1947, 330 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234, and in its handling of the problems presented by that case, Congress demonstrated that it knew how to cede jurisdiction to the states.'"

See also *Rice v. Santa Fe Elevator Corporation*, 331 U. S. 218, 236. The conclusion that Section 10(a) means a state cannot act in a case over which the Federal Board has jurisdiction in the absence of cession was also well stated in *Retail Clerks v. Your Food Stores*, 225 F. 2d 659, 663 (C. A. 10, 1955):

> "Amended section 10 (a) of the Act specifically provides what this Court deems to be the only way state authorities can be vested with authority now within the exclusive purview of the Act. Unless and until there is an express ceding of jurisdiction to a proper state agency exclusive jurisdiction remains in the federal agency. For sake of order such must be true. Otherwise, an interminable problem of determining jurisdiction would exist, throwing needless confusion into an area clearly pre-empted by Congress."

---

[7] Footnote of the Court: "Section 10 (a) of the 1947 Act, 29 U. S. C. (Supp. III) Section 160 (a), 29 U. S. C. A. Section 160 (a). A proviso of Section 10 (a) authorizes cession of jurisdiction to the states only where the state law is consistent with the federal legislation. This insures that the national labor policy will not be thwarted even in the predominantly local enterprises to which the proviso applies. S. Rep. No. 105, 80th Cong., 1st Sess. 26 (1947). See also minority views to same report, id., pt. 2, 38, agreeing as to this feature of the legislation."

One additional decision of this Court requires comment in this context. Appellees may rely on *Algoma Plywood and Veneer Co. v. W. E. R. B.*, 336 U. S. 301. This reliance is obviously misplaced.

The *Algoma* case concerned the provisions of the Wisconsin labor relations statute regulating union shop agreements. The case arose before the passage of the Taft-Hartley Act, but was decided after its passage. The Court allowed the state law, which contained more severe union security restrictions than the Federal Act, to prevail, concluding that the states had authority to impose such additional restrictions both under the Wagner and under the Taft-Hartley Act. Insofar as the Wagner Act was concerned, it contained merely permissive federal regulation of union security agreements, and the legislative history of that statute made the authority of the states in this area clear. The portions of the opinion dealing with the post Taft-Hartley validity of the Wisconsin statute were controlled by the fact that Congress, in Section 14(b) of the Taft-Hartley Act, specifically provided for the continued enforceability of the state statutes regulating union shop agreements. Wisconsin could impose more restrictive regulations upon union shop agreements than those imposed by the Taft-Hartley Act for the plain reason that Congress in Section 14(b) expressly said the states could do so. The *Algoma* case is no authority whatsoever for post Taft-Hartley regulation of union unfair labor practices as to which no such specific provision exists.

The necessary inference to be drawn from Section 14(b), when read in conjunction with the cession proviso of Section 10 (a), is that the states may prevent conduct constituting unfair labor practices under the Tart-Hartley Act *only* when cession has taken place pursuant to the pro-

visions of the statute. Congress would not otherwise have (1) designated a special tribunal to enforce the federal policy, (2) specified the method by which that board may cede some of its power to the states, and (3) indicated the specific field where state legislation was to prevail.

This Court's concern with the duplication of the exclusive federal remedy has been repeatedly revealed. This Court said in *Algoma Plywood and Veneer Company v. W. E. R. B.*, 336 U. S. 301, 306:

> "• • • Section 10 (a) was designed • • • to preclude conflict in the administration of remedies for the practices proscribed by Section 8."

Wisconsin here enjoined practices proscribed by Section 8. In *Garner v. Teamsters Union*, 346 U. S. 485, this Court said at 498:

> "The conflict lies in remedies, not rights."

And in *Weber v. Anheuser-Busch*, 348 U. S. 468:

> "In *Garner*, the emphasis was not on two conflicting labor statutes but rather on two similar remedies, one state and one federal, brought to bear on precisely the same conduct."

This similarity in remedies is exactly the case here.

This Court thus has ruled that the federal remedy for preventing unfair labor practices is exclusive and that the states may not, in regulating such conduct, impinge upon that remedy. This result has obtained whether the attempted state regulation is based on a state labor statute or grounded elsewhere. The State's action in this case fails both tests. (1) It constitutes enforcement of state

labor policy; (2), it constitutes regulation which almost exactly duplicates the federal procedure and remedy. Although we do not agree with the result reached in *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, the holding in that case is consistent with the position advanced by appellant here and, indeed supports the result for which we urge. In the *Laburnum* case, recovery of damages in a common law tort action was allowed, although the union's conduct on which the action was based (which entailed violence) was also an unfair labor practice under the Taft-Hartley Act. That case thus seems to support a state remedy against union unfair labor practices having no parallel in any federal remedy; to-wit:

> "• • • the *violent conduct* was reached by a remedy having no parallel in, and not in conflict with, any remedy afforded by the federal Act." (Italics added; *Weber v. Anheuser-Busch*, 348 U. S. 468, 477.)*

The clear inference is that the state is without jurisdiction to regulate violent conduct where the state remedy *has* a parallel in the Federal Act (to the extent, as is the case here, of substantially duplicating it), and that the state procedure survives only if there is no conflict with the federal remedy. Thus, the Court said in *Laburnum:*

> "To the extent that Congress prescribed preventive procedure against unfair labor practices, • • • [the Garner] case recognized that the Act excluded conflicting state procedure to the same end. • • • The care we took in the *Garner* case to demonstrate the existing conflict between state and federal administrative remedies in that case was, itself, a

* The federal remedy being preventive rather than remedial. Here the WERB orders appears to be preventive in the same sense as this court (in *Laburnum*) characterized the federal remedy.

> recognition that *if no conflict had existed, the state procedure would have survived.*" (Italics added; 347 U. S. 665.)

* * * * *

We have said the union's conduct is of the *kind* over which the federal board has powers of investigation and adjudication. This is all that is required to result in a holding that the State tribunals were without jurisdiction. The rule developed by this Court is that where the conduct involved reasonably falls within the sections of the federal statute prohibiting unfair labor practices, the State tribunal must decline jurisdiction, for it is the federal board which was empowered by Congress to determine in the first instance whether in fact, the conduct involved comes under the prohibitions (or the protection) of the federal act. The Court said in *Garner v. Teamsters Union*, 346 U. S. 485 at 490:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order."

See also *Weber v. Anheuser-Busch*, 348 U. S. 468, 478; *Local Union No. 25 v. N. Y., New Haven and Hartford R. R. Co.*, ... U. S. ..., 76 Sup. Ct. 227, 231.

The point is that it is the federal board which is empowered in the first instance to determine whether or not the union's conduct is prohibited as an unfair labor

practice.[9] Until then, it is sufficient that the conduct claimed *may be* a violation of 8 (b)(1)(a). It follows that the state tribunals must be prohibited from assertion of jurisdiction except following a National Labor Relations Board determination that *none*, or only *some*, of the conduct involved is either protected or prohibited by the Federal Act.

II.

The Allen-Bradley and Briggs-Stratton cases do not sanction application of a state labor act to conduct regulated by the federal labor act.

We have argued that under general and well established principles of pre-emption, as applied by this Court to labor relations, Wisconsin clearly acted beyond its authority by applying its own preventive unfair labor practice remedy to the kind of conduct which the federal board is empowered to investigate and regulate. The only question which remains to be answered is whether a different result should obtain here because Wisconsin found the union's conduct to be coercive and violent. To support the claim for such an exception, *Allen-Bradley Local 1111 v. Wisconsin Board*, 315 U. S. 740, is frequently cited. Factually, the instant case is substantially similar to *Allen-*

---

[9] This is also the answer to the claim which may be made that certain relief (such as limiting the number of pickets) granted by the State board may not be allowed by NLRB. Congress, by giving the federal board power in unfair labor practice cases to "* * * issue * * * an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action * * * as will effectuate the policies of this Act" [29 U. S. C. 160 (c)] has indicated that such questions should also be resolved in the first instance by the federal board. It is, in any event, clear that the state may not in a state unfair labor practice proceeding *enlarge* upon the exclusive federal unfair labor practice procedure.

Bradley. Like *Allen-Bradley*, it is an action to enforce an order growing out of an unfair labor practice proceeding before the Wisconsin Employment Relations Board. The provisions of the Wisconsin labor relations statute on which the unfair labor practice order is based are the same as in *Allen-Bradley*. The nature of the union conduct claimed to violate the Wisconsin statute is substantially the same as in *Allen-Bradley*—i.e., coercive and violent action against employees to prevent them from working during a strike.

For these reasons, the Supreme Court of Wisconsin held, and appellees will here argue, that the federal pre-emption issue is the same as in *Allen-Bradley* and hence the decision below should be sustained.

There is one significant difference.[10] *Allen-Bradley* was decided in 1942. The federal statute upon which the union's entire claim of conflict with state law here rests did not even exist then. It was not passed until 1947.

That is, of course, a considerable difference. When *Allen-Bradley* was decided, the Wagner Act was in effect. As noted, it prohibited employer unfair labor practices and provided a centralized administrative machinery for the protection of union and employee rights against such employer practices. There was no such thing as either federal substantive law or federal administrative procedure designed to control union unfair labor practices. Wisconsin's statute, on the other hand, while modeled on the federal act, regulated both employer and union unfair practices. The union did not argue in *Allen-Bradley* that

---

[10] There may be another difference. There was not, insofar as it appears from this Court's opinion, any charge in the *Allen-Bradley* case that the company had committed unfair labor practices against the union and the employees which could be heard only by the Federal Board. See Point V below, pp. 38-43.

Congress had taken in hand the kind of union unfair labor practice there alleged. It argued, to the contrary, that the state's prohibition of union coercion might interfere with union activities protected by the Wagner Act.

This Court did not find the argument persuasive. It found that the nature of the state regulation was not such as to interfere with union activities protected by the federal statute and it concluded that the *absence of federal regulation* of union unfair labor practices (in 1942) left the states free to regulate them. This Court characterized the basis of its holding in *Allen-Bradley* as follows:

> "Congress has not made such employee and union conduct as is involved in this case subject to regulation by the Federal Board." 315 U. S. 740, 749.

Subsequent references by this Court to the *Allen-Bradley* decision also indicate that the basis for that decision was that Congress had in no wise attempted to regulate the conduct there involved, thus leaving the states free to enjoin it under state law. Thus, in *Hill v. Florida*, 325 U. S. 538, 539:

> "Certain conduct, such as mass picketing, threats, violence, and related actions we held [in *Allen-Bradley*] were not governed by the *Wagner* Act, and hence, Wisconsin was free to regulate them." (Italics added.)

Recently, in *Weber v. Anheuser-Busch*, 348 U. S. 468, *Allen-Bradley* was explained as follows at 477:

> "The Court held that such conduct was not subject to regulation by the federal Board, either by prohibition or by protection."

In 1947, the federal government enacted the Taft-Hartley Act. Labor Management Relations Act, 1947, 29 U. S. C. 141 ff. Union unfair labor practices were defined and the

National Labor Relations Board was given power to proscribe them. 29 U. S. C. 158 (b) and 160. Section 8 (b) (1) [29 U. S. C. 168 (b)(1)] was enacted providing that it was an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their Section 7 rights. Congress thus made subject to the centralized administrative procedures of the National Board precisely the same kind of conduct which had previously been made subject (by paragraphs 111.06 (2)(a)(f), the parts of the Wisconsin statute here involved) to the administrative procedures of the state labor board.

Thus, we submit that the *Allen-Bradley* case is of no applicability here. We realize this Court has, since the passage of the Taft-Hartley Act, continued to cite the *Allen-Bradley case*. These citations, it will be argued, show to that the passage of the Taft-Hartley Act did not change the holding of the Court in *Allen-Bradley* that Wisconsin's statute is valid. The instances, however, in which *Allen-Bradley* has been cited since 1947 are quite consistent with our contention that, in the light of the Taft-Hartley Act, Wisconsin's labor relations regulation cannot survive.

Allen-Bradley stands for the proposition that the states may continue to regulate aspects of union conduct which are not regulated by the Federal Act. There may remain truth in that proposition. But the proposition has no application when the aspect of union conduct which was regulated by Wisconsin in *Allen-Bradley* is subsequently regulated by federal statute. The passage of the Taft-Hartley Act may not have destroyed the general proposition of law upon which *Allen-Bradley* rested. It certainly made that proposition inapplicable here.

Allen-Bradley has also been cited by this Court for another proposition—the right of the states to continue to exercise their "historic powers over such traditionally regulated matters as public safety and order and the use of streets and highways." 315 U. S. 740, 749, quoted in *Garner v. Teamsters Union*, 346 U. S. 485, 488. This proposition, too, remains valid but also is inapplicable. The federal statute may not prevent the states from enforcing their traditional policies which do not involve a weighing of the social interests involved in labor relations matters even though those policies happen to be applied in a labor-management controversy. Thus, the states may find liability for acts of violence and take appropriate police measures to prevent their recurrence, whether the violence occurs in connection with a strike, a political rally or in Joe's bar. In such cases, the state is enforcing its policy against disturbances of the peace, not its policy relating to strikes, its policy relating to political matters, or its policy relating to the dispensing of alcoholic beverages. On the other hand, regulation which has as its basis a decision by the state that a particular kind of union activity should be restrained, or permitted only under certain conditions, is a matter of labor policy and cannot be enforced if the parties are subject to the Federal Act. Congress has pre-empted this field and closed it to state regulation.

We believe that the recent citations of *Allen-Bradley* by this Court indicate only that the states may exercise their traditional police powers to restrain breaches of the peace or other action which violate state policy, whether or not that action occurs in connection with a labor controversy. But that proposition does not control this case.

The case at bar does not represent an attempt by the state to enforce criminal laws of general applicability in the exercise of police power for the maintenance of the

public peace or the regulation of traffic, or to take similar traditional measures cutting across labor relations laws. This case represents the enforcement, by the State, of its *labor relations statute,* the so-called Employment Peace Act, in the form of an administrative unfair labor practice proceeding. It is a case in which the State of Wisconsin, reserving its generally applicable police powers, has established a *labor* policy, pursuant to which it applies special remedies and invokes special procedures in cases in which coercive actions take place in a labor controversy.

The Wisconsin Employment Peace Act, as is plain on its face, does not express the State's general policy against violence or intimidation or breaches of the peace. Nor, contrary to what may be argued, is it a general regulation of the streets and highways of the State of Wisconsin. The Wisconsin Employment Peace Act expresses the decision of the State as to the proper method of conducting strikes and other labor controversies, and provides administrative procedures, comparable to those contained in the federal labor statute, by which the State's labor policy may be enforced. We submit that the *Garner* case and the *Anheuser-Busch* case make it crystal clear that such state regulation must fail when applied to controversies over which Congress has assumed control.

This case is, indeed, almost precisely the same as the *Garner* case. All of the considerations present in the *Garner* case are present here. All of the arguments available to the employer in the *Garner* case are available here. And those arguments must fail here as they did in the *Garner* case.

There is but one difference. In *Garner,* the union unfair labor practice, which the state also interdicted, arose under Section 8 (b)(2) of the Taft-Hartley Act. Here the union

activities claimed would violate Section 8 (b)(1). Unlike 8 (b)(2), actions which violate 8 (b)(1) are actions which may in some cases also be punishable as violations of a state's general criminal law. That difference might very well be urged to support an application of a state's general criminal law against the claim of federal pre-emption. But the fact that this case involves matters which the police are empowered to regulate generally, while it may serve to sustain an exercise of that police power, cannot serve to sustain the additional exercise of the State's labor relations policy. Nor does the *Laburnum* case, previously discussed, authorize state regulation of violence in the form such regulation took here. As was said in *Weber v. Anheuser-Busch*, 348 U. S. 468, 477:

> "* * * the violent conduct [in *Laburnum*] was reached by a remedy having no parallel in, and not in conflict with, any remedy afforded by the federal Act."

The plain inference is that the state is without jurisdiction to regulate violent conduct where the state remedy has a parallel in the Federal Act. And such a parallel plainly exists here.

Appellees can derive little comfort from this Court's decision in *UAW-AFL v. Wisconsin Employment Relations Board*, 336 U. S. 245 (the so-called *Briggs-Stratton* case). The union's conduct there enjoined under the state labor act was, in the view of this Court, neither protected nor forbidden by the Federal Act. We question the wisdom of this Court's *pre-judging* of that issue (following determination by state tribunals but without prior National Labor Board proceedings) and believe that under more recent decisions a different result might have been reached. But in any event, the holding in the *Briggs-Stratton* case is but an

application of one of the two propositions for which *Allen-Bradley* stands, namely, that a state may, under its labor act, continue to regulate union conduct not protected or prohibited by the Federal Labor Act. That proposition has no application when, as here, the conduct involved is subject to federal regulation. Neither the *Allen-Bradley*, nor the *Briggs-Stratton* case support state jurisdiction under a state *labor* statute over conduct which is *also* regulated by the Federal Labor Act.

III.

The State may not duplicate the exclusive federal procedure for prohibiting unfair labor practices, whatever continued authority it may retain under its police power to prohibit or punish such conduct in the traditional manner by enforcing criminal laws of general applicability or other historic means.

Wisconsin reads recent decisions of this Court as reserving to the states police control over the prevention of breaches of the peace and related conduct in connection with labor disputes. The State says the type of conduct here prohibited would have been within state jurisdiction if engaged in by "unorganized private persons". Wisconsin will surely argue that Congress did not intend to confer immunity on labor organizations and their agents and members.

Appellant is not, however, claiming immunity here. We do not argue in this case that it is not within the authority of local government to proscribe the type of conduct here involved under laws regulating all persons, including unions, as well as "unorganized private persons". We are not aware that Wisconsin has made unions immune against the same laws relating to violence and breaches of the peace that apply to "unorganized private persons". Wisconsin

can continue to apply those laws to unions and to "unorganized private persons" alike.[11]

The question is whether the State may exercise its general historic powers to preserve the public peace by defining and enjoining unfair labor practices under a state labor act even though this is the kind of conduct which may also constitute unfair labor practices under the federal labor law. We do not believe that Wisconsin may impose such additional restrictions and provide such additional administrative remedies when unions and not "unorganized private persons" are involved, in order to execute its own policy as to the kind of remedy and the kind of controls that should apply to labor disputes. To find the definitive answer to this problem it is necessary to determine whether the attempted state regulation can be reconciled with the language and policy of the federal enactments. Chief Justice Stone, speaking for the Court in *Southern Pacific Co. v. Arizona*, 325 U. S. 761, gave the following analysis at 769:

> "Congress has undoubted power to redefine the distribution of power over interstate commerce. It may either permit the states to regulate the commerce in a manner which would otherwise not be permissible, * * * or exclude state regulation even of matters of peculiarly local concern which, nevertheless, affect interstate commerce."

It is necessary, thus, to turn to the Congressional intent to see whether state regulation as attempted by Wisconsin in this case was authorized by Congress. Repeated reiteration by appellees, like the incantation of some magic for-

---

[11] Indeed, Section 111.07 (1) of the Wisconsin Employment Peace Act clearly says that "nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction."

mula, that the State here was exercising its police powers cannot, in and of itself, be sufficient to warrant an intrusion upon a federally pre-empted field and the comprehensive federal legislative scheme.

We have already, in Section I of this Argument, described and discussed the crucial statutory language and this Court's view of it. It is evident that this Court has recognized that language as evincing Congress' intention to exclude state agencies from the enforcement of *labor* policy and from the duplication of the federal unfair labor practice remedy. Thus, the Court said in *California v. Zook*, 336 U. S. 725, 732:

> "And when sate enforcement mechanisms so helpful to federal officials are to be excluded, Congress may say so, as in the Taft-Hartley Act, 29 U. S. C. (Supp.), Section 160 (a), 29 U. S. C. Section 160 (a)."

It remains for us to examine the legislative history that went before the enactment of the Taft-Hartley amendments to the Wagner Act.

IV.

The Legislative History.

Appellees will doubtless rely on a statement made by Senator Taft with reference to Section 8 (b) (4), in response to the objection that enactment of that provision would subject unions to two remedies for the same act:

> "There is no reason in the world why there should not be two remedies for an act of that kind." (2 Legislative History of the Labor Management Relations Act, 1947, 1031.)

They will doubtless rely on this and similar statements to support their arguments that Congress did not intend the result for which we here urge.

Let it be noted, however, that Senator Taft envisioned application of *two* remedies. Appellee's position in this case is that there be *three* remedies for the same conduct—the federal unfair labor practice remedy, the state unfair labor practice remedy, and such other legal or equitable relief as might be appropriate and available, the pursuit of which is specifically preserved by the Wisconsin act [Section 111.07 (1)]. The legislative history does, indeed, appear to give some support to continued applicability of "State and local police laws"—as they are frequently referred to in the Senatorial debates. It does *not* support the continued validity of state labor relations procedures entailing, as they would, a *third* remedy for the same conduct.

The Senate debates make it quite clear that Senator Taft, in referring to the "law of the state" (*2 Legislative History of the Labor Management Relations Act, 1947*, 1031) and Senator Ball, in referring to "good local law enforcement" (*2 Legislative History Labor Management Relations Act, 1947*, 1200) intended to refer to the generally uniform state criminal laws covering all cases of physical violence, not to administrative procedures of state labor relations statutes.

The debate in the Senate over Section 8 (b)(1) revolved in the main around the objections of opposing Senators to any specific singling out of labor coercion for additional administrative handling when all violence, whether or not in conjunction with a labor dispute, was already subject to state criminal penalties. The proponents of Section 8 (b)(1) argued that the peace officers charged with enforcing such generally applicable criminal laws would be en-

couraged by the addition of a federal administrative procedure dealing, in part, with the same ground. Neither the opponents nor proponents of Section 8 (b)(1) assumed that state labor relations procedure *and* federal labor relations procedures would be imposed on the existing criminal law.

An examination of the Senate hearings on various proposals to amend the Wagner Act also reveals that what sponsors and supporters of amendments similar to 8 (b)(1), as finally enacted, were concerned with was the then supposed failure of local law enforcement in connection with labor disputes. For example, Mr. Gerard D. Reilly, a former National Labor Relations Board member and prominent supporter of Ta -Hartley, analyzed these provisions as follows:

> "When the Wagner bill was reported to the Senate in 1935 similar proposals were rejected by the Senate committee on the ground that interference by labor organizers with employees amounted to a breach of local law and was punishable in local police courts. Experience of 11 years of administration with the statute has disproved this theory, • • •." (Hearings before the Committee on Labor and Public Welfare, U. S. Senate, 80th Congress, First Session on S. 55 and S. J. Res. 22, p. 303.)

To the same effect, Mr. Ira Mosher, Chairman of the Executive Committee of the National Association of Manufacturers:

> "The failure of local law enforcement agencies to preserve individual rights has been one of the most disquieting developments of the post-war labor scene. In dozens, if not hundreds, of cases mass picketing has subjected thousands of individuals to force and violence exerted upon employees and the public alike. Men have been imprisoned within plants; office workers and factory workers alike have been terrorized • • •." (*Id.* p. 966.)

On the other hand, opponents to measures of this sort, pointed out that the Congress was seeking to prohibit conduct already subject to the local criminal laws. Indeed, the proponents apparently recognized the same thing, believing, however, that these local criminal laws were not being adequately enforced.[12]

There can, in any event be no doubt that, on the basis of these considerations, 8 (b)(1) was enacted into law and was intended to regulate conduct such as is involved in this case. Representative Hartley said of it:

> "This bill * * * does prohibit mass picketing and use of violence in the conduct of a strike." (1 Legislative History, p. 882. See also, 2 Leg. History, etc., p. 993.)

It could with some logic be argued from this that the federal remedy for the prevention of violence is *totally* exclusive and was intended to oust *all* other remedies, the Congress viewing the latter as inadequate and, therefore, enacting a federal procedure for the solution of a national problem. Whatever the merits of that contention, it seems in any event clear that proponents as well as opponents of this legislation had in mind at most the supplementation of local enforcement of the criminal laws by means of the federal unfair labor practice procedure. There is no indication that the references to local laws and their enforcement refer to anything other than the existing criminal law.

---

[12] Hearings before a Subcommittee of the Senate Committee on Education and Labor on H. R. 4908 (the so-called "Case bill") 79th Congress, 2d Session, reveal that this same concern with the supposed failure of effective local law enforcement was already alive in 1946. Thus, Section 11 of that bill contains a provision outlawing violence in labor disputes and making them subject to federal court injunctions. The discussions concerning that section clearly reveal them to be a response to the supposed ineffectiveness of *local police law.* See e. g. pages 14, 49, 115 of the record of the Hearings, *supra.*

This is shown very clearly in a speech by Senator Ives. After pointing out that Section 8 (b)(1) would make unions liable *twice* for the same offense, the Senator went on to point out that the existing state law remedies were more than adequate since the "effective remedy against such offenses is quick arrest, criminal trial, and conviction, not an administrative hearing * * *" (*2 Leg. History, etc.* 1021). This makes clear what all assumed—that the repeated reference to existing state law and the police powers of the states, which would be duplicated by Section 8 (b)(1), were references to the general state criminal law against violence and coercion, not to state labor relations statutes.

We believe that the legislative history of the Federal Act, when considered as a whole, supports the claim of federal pre-emption made here.

V.

The Federal-State Conflict in This Case.

We have argued that Congress intended and this Court has held the federal procedures for the regulation of labor relations to be pre-emptive and exclusive in character, prohibiting substantive and procedural state measures that impinge upon the federal rules and remedies. We have also sought to demonstrate that, whatever may be the states' continuing authority to regulate mass picketing, threats of violence, etc., by enforcing criminal laws of general applicability and other historic measures, they may not, through the enforcement of *state labor policy* as declared in a State Labor Act, duplicate the exclusive federal procedure for prohibiting such unfair labor practices. The potential conflict between state and federal regulation provides the logical basis for the pre-emption doctrine. The soundness of

that doctrine is concretely illustrated in this case because here the potential conflict in jurisdiction has become actual.

Thus this very case demonstrates the confusion and potential undermining of the Congressional enactment which follows from state enforcement of its own labor relations policy in a controversy which is also subject to the federal law. In this case, the same strike has given rise to two unfair labor practice proceedings—one under the Federal Act and one under the Wisconsin Act—in which the same fact situation is being litigated.

There is no question that the dispute out of which this proceeding arises is subject to the Federal Act. Unfair labor practice proceedings under the Federal Act, arising from earlier events, were pending against the Kohler Company when the present strike began. N. L. R. B. had asserted jurisdiction over the Kohler Company in representation proceedings. See *Kohler Company*, 93 N. L. R. B. 398; *Kohler Company*, 108 N. L. R. B. 207; enforced, 220 F. 2d 3 (C. A. 7).

The very conduct here involved is also currently the subject of a National Labor Relations Board proceeding. The strike began on April 5, 1954. On April 15, the Kohler Company filed its complaint with the Wisconsin Employment Relations Board. That proceeding resulted in the order which is under attack in this case. Meanwhile, the union, on July 8, 1954, filed charges with the National Labor Relations Board that the company had failed to bargain collectively and had discriminatorily discharged certain employees and otherwise interfered with and coerced employees in the exercise of their statutory rights. After investigation, a complaint was issued against the company by the General Counsel of the Federal Board and the company answered. The matter went to hearing in

February, 1955. The hearings have as of the date of this writing not been concluded. *Matter of Kohler Co.*, N. L. R. B. Case No. 13-CA-1780.

The fact that both the federal and state labor relations board are seeking to exercise jurisdiction over the same controversy is, we think, significant enough. But even more significant is the fact that the identical issues are being litigated before both tribunals.

One of the contentions of the union and the General Counsel of the National Labor Relations Board in the federal proceeding is that the Kohler Company has refused to bargain in good faith with the union. The company, answering this contention, claims that the union, by engaging in the same course of action complained of in the Wisconsin proceeding, has itself failed to bargain in good faith and that this failure excuses the company.

The company's contention in the federal proceeding is set forth clearly in the answer which it filed with the National Labor Relations Board in December, 1954, which states, in part as follows:

> "[Respondent] further alleges that the Union was not bargaining in good faith in that beginning April 5, 1954, and continuing to date it engaged in, supported, urged and fostered coercive and illegal conduct, including interfering by force, threat, intimidation and mass pickets with persons desiring to pursue lawful work and employment for the respondent, attempting by such means to prevent lawful work or employment by persons desiring to work for the respondent; obstructing and interfering by mass pickets and by physical obstruction with the free and lawful use of public streets, and with the free and lawful use of entrances to and driveways leading to the plant of respondent, threatening them with physical injury, picketing their homes, follow-

ing and intimidating them on foot and in vehicles, subjecting them to harassing telephone calls, causing injury and damage to their homes and other property and to their persons, and by similar act and conduct all with the intent to force respondent to capitulate to the Union's demand as the price of securing discontinuance of said coercive and illegal conduct, and accompanied by repeated statement by representatives of the Union that respondent could obtain relief from said illegal and coercive conduct by signing a contract satisfactory to the Union.'"[13]

The company has thus itself illustrated what is in any case plain: the Federal Act is an integrated whole. One cannot separate out parts of the conduct of one of the parties to a labor dispute and deal with it separately without destroying the scheme which Congress has established for the regulation of such disputes.

Picket lines are not conducted in a vacuum. Nor does bargaining take place without reference to what has happened on the picket line. Each act in a complex labor dispute is necessarily related to what has gone before and provides the basis for what will happen later. No particular aspect of the dispute can properly be seen when isolated from the whole dispute—either as a matter of life or as a matter of law.

The Federal Act recognizes these inter-relationships. Thus, the fact that an employer has engaged in unfair labor practices such as a refusal to bargain may, under the federal law, give reinstatement rights to employees who have engaged in coercive picket line conduct which would otherwise disqualify them. *N. L. R. B. v. Thayer Co.*, 213 F. 2d (C. A. 1, 1954), *cert. denied* 348 U. S. 883. And, on

[13] See Appendix "C" *infra*, pp. 17a, 18a, 23a, 24a, and 28a.

the other hand, the fact that violence has occurred on the picket line may, the company is contending before the federal board, excuse it from the duty to bargain which it would otherwise have.

All of these issues are necessarily inter-related. Congress has enacted a statute under which the entire controversy can be taken in hand, under which both parties can obtain adjudication before a single body of their claims of unfair action, each against the other, and under which the whole pattern of conduct of both sides can be evaluated.

Wisconsin, it is true, has also enacted such a statute. Under the Wisconsin statute it is an unfair labor practice for an employer to refuse to bargain in good faith or to discriminatorily discharge employees, or intimidate or coerce them, for engaging in concerted activities. And the Supreme Court of Wisconsin ruled in this case that the union could raise defenses, such as the maintenance of an arsenal by the company in the plant by itself instituting unfair labor practice proceedings against Kohler Company before the Wisconsin Board.

But it seems crystal clear that the union's charges against the Kohler Co. could not have been heard by the Wisconsin Board. The decisions of this Court clearly establish that the National Labor Relations Board has exclusive jurisdiction over those charges. *Plankinton Packing Co. v. Wisconsin Board*, 338 U. S. 953; *Garner v. Teamsters Union*, 346 U. S. 485. And, indeed, the union did include the maintenance of a weapons arsenal by the Company in its charge to the National Board that the Company had coerced and

restrained the employees in the exercise of their right in collective action."[14]

The net result of the exception to the general pre-emption doctrine which appellees contend for is, therefore, an artificial division of the issues in dispute. As to the issue of coercion by the union, the Kohler Company has its choice of labor tribunals. It can file charges either with the Federal board or the Wisconsin board—depending upon its own judgment as to the effectiveness of the relief offered and the chances of success in each. But the union cannot so shop—even as to its charges on issues integrally related to the issue before the Wisconsin Board. These other issues, their relationship to the claimed coercion, and indeed the factual redetermination of the coercion issue itself are all subject to adjudication in the proceeding before the National Labor Relations Board.

The question here, then, is whether Wisconsin may continue to enforce its own labor policy with respect to the single issue of union coercion, in splendid isolation from the other issues, even though: (1) that policy duplicates the federal policy, (2) the issue of coercion is integrally inter-related with other issues arising out of the same dis-

---

[14] The union alleged, in part:

"The company through its president, Herbert V. Kohler, admitted the possession and the presence upon the premises of the company plant, of guns, clubs and other forms of ammunition, as a means of interfering with, restraining, coercing, or discouraging the employees in the exercise of their rights to engage in concerted activities.

"A few days thereafter, on or about May 30, 1954, the Sheriff of Sheboygan County removed from the company premises the ammunition including tear gas, heretofore kept by the company as a means of coercing the employees, and as a threat of reprisal upon them." (See R. 30.)

pute which only the federal board can decide and (3) the coercion issue is itself subject to different determination in the procedure Congress has provided for the whole dispute. We think it plain that this kind of truncated and Balkanized adjudication should not be permitted to stand in the face of the Federal Act.[15]

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed.

HAROLD A. CRANEFIELD,
Counsel for Appellant.

MAX RASKIN,
WILLIAM F. QUICK
KURT L. HANSLOWE,
REDMOND H. ROCHE, Jr.,
Of Counsel for Appellant.

---

[15] It may be argued that none of the proceedings before the National Labor Relations Board is of record in this case and cannot therefore be considered by the Court. The short answer to this objection is that the NLRB record is a public one of which, we believe, we may properly advise this Court. Further, an examination of the chronology will reveal that there is no conceivable way by which the facts concerning the actual conflict could have been made a part of the record in this case. The Wisconsin board filed its order in May of 1954. Kohler Company did not raise the facts, concerning which WERB ruled, before NLRB until December, 1954. The actual conflict in this case is, in any event, significant only because it illustrates the wisdom of the pre-emption doctrine which is designed to avoid potential conflict.

APPENDIX A

WISCONSIN STATUTES 1953

Section 111.04 (page 1905):

"111.04 *Rights of employes.* Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities."

Section 111.06 (2) (a) (f) (page 1907):

"(2) It shall be an unfair labor practice for an employe individually or in concert with others:

(a) to coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

* * *

(f) To hinder, or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

Section 111.07 (page 1908):

"111.07 *Prevention of unfair labor practices.* (1) Any controversy concerning unfair labor practices

may be submitted to the board in the manner and with the effect provided in this subchapter, but nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction."

APPENDIX B

NATIONAL LABOR RELATIONS ACT; 61 STAT. 140 ff, 29 U. S. C.

Section 157; Section 158 (b)(1), Section 160 (a) and (j):

"Sec. 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

"Sec. 158 (b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;"

"Section 160 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

"Section 160 (j). The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

"Section 164 (b). Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

APPENDIX C

EXCERPTS FROM PLEADINGS IN N. L. R. B. UNFAIR LABOR PRACTICE CASE No. 13-CA-1780

UNITED STATES OF AMERICA

Before the

NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

In the Matter of Kohler Co., Respondent, and Local 833, UAW-CIO, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Charging Party.	Case No. 13-CA-1780.

COMPLAINT

It having been charged by Local 833, UAW CIO, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, hereinafter referred to as the Union, that Kohler Co. a corporation, hereinafter called the Respondent, has engaged in and is now engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter called the Act, the General Counsel of the National Labor Relations Board, hereinafter referred to respectively as the General Counsel and the Board, on behalf of the Board, by the Regional Director for the Thirteenth Region, designated by the Board's

Rules and Regulations, Series 6, as amended, hereby issues this Complaint and alleges the following:

1. A copy of the charge was duly served upon the Respondent on July 13, 1954; a copy of the first amended charge was duly served upon the Respondent on October 5, 1954; and a copy of the second amended charge was duly served upon the Respondent on October 16, 1954.

2. The Respondent is now and at all times material herein has been a corporation duly organized and existing by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at Kohler, Wisconsin, and with offices located in the States of Massachusetts, Illinois, Ohio, Michigan, Texas, California, Minnesota, New Jersey, New York, Pennsylvania, Missouri, Oregon, and in London, England. It is engaged in the manufacture and sale of plumbing fixtures, heating equipment, electrical appliances, air cooled engines and precision parts. Its principal plant for the manufacture of the foregoing products is located in Kohler, Wisconsin, which plant is hereinafter referred to as the Plant.

3. The Respondent in the course, conduct and operation of its business at all times material herein, has continuously caused materials used by it in its business to be purchased and transported in interstate commerce directly to the Plant at Kohler, Wisconsin, from and through States of the United States other than the State of Wisconsin. During the year 1953, the value of such materials was in excess of $1,000,000.

Respondent in the course, conduct and operations of its business at all times material herein, has continuously caused quantities of its products manufactured in the Plant to be sold, shipped and transported in interstate commerce from the Plant in Kohler, Wisconsin, into and through States of the United States other than the State of Wisconsin.

During the year 1953, the value of such products was in excess of $1,000,000.

4. Respondent is and at all times material herein has been engaged in commerce, and its operations affect and have affected commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Union is, and at all times material herein, has been a labor organization within the meaning of Section 2 (5) of the Act.

6. All production and maintenance employees of the Respondent's Kohler, Wisconsin plant, including shop-office stenographers, American Club employees, all employees described in the October 23, 1950 Supplement "B" of the contract executed on August 31, 1950 between Respondent and the Kohler Workers' Association and all employees described in Supplement "F" of the contract, including employees doing experimental work in the development department, but excluding general office and clerical employees, draftsmen, technicians, clerks in the medical department, employees in the employment department, doctors, dentists, nurses, engineers, employees in the chemical and physical laboratory, confidential employees, watchmen, guards and supervisors as defined in the Act, constitute, and at all times material herein have constituted a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (a) and (b) of the Act, which appropriate unit is hereinafter referred to as the Unit.

7. On June 10 and 11, 1952, pursuant to a Stipulation for Certification upon Consent Election in Cases 13-RM-127 and 13-RC-2673, a majority of the employees in the Unit designated the Union as their representative for the purposes of collective bargaining with the Respondent. The

Union at all times since those dates, by virtue of Section 9 (c) of the Act, has been and is now the exclusive bargaining representative of all employees in the Unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment.

8. Respondent by its officers, agents and representatives, while engaged in the course and conduct of its business at the Plant, on or about July 1, 1954 discriminatorily discharged the following employees:

(Names of 52 employees omitted.)

and at all times thereafter and to the date hereof has discriminatorily failed and refused and continues to fail and refuse to reinstate the above employees, or any of them, all for the reason that they and each of them had joined or assisted the Union, or had otherwise engaged in concerted activities for the purposes of collective bargaining or other mutual aid and protection.

9. Respondent by its officers, agents and representatives has failed and refused and continues to fail and refuse to bargain with the Union by engaging in the following acts:

(a) On or about April 5, 1954, the Respondent put into effect a wage increase without any negotiation with, consultation with or notice to the Union, the exclusive representative of the employees in the Unit;

(b) On or about June 29, 1954, the Respondent broke off bargaining negotiations with the Union, refused to continue to engage in such negotiations and refused to meet with the Union;

(c) On or about July 1, 1954, Respondent discharged the employees of the shell department who were out on strike and transferred the employees of the shell department who were not on strike to other departments of the Respondent, all this without negotiation with, consultation with, or prior notification to the Union, the exclusive bargaining representative of the employees in the Unit;

(d) On or about August 18, 1954, Respondent broke off bargaining negotiations with the Union, refused to continue to engage in such negotiations, and refused to meet with the Union.

10. By the acts set forth in paragraph 9 hereof and by each of them(Respondent has failed and refused and continues to fail and refuse to bargain with the Union, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

11. By the acts set forth in paargraph 8 hereof, and by each of them, the Respondent did discriminate and is discriminating regarding the hire, tenure, terms and conditions of employment of its employees and did thereby discourage and is thereby discouraging membership in the Union and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

12. By the acts set forth in paragraphs 8 and 9, and by each of them, Respondent did interfere with, restrain, coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a)(1) of the Act.

13. The acts of the Respondent set forth in paragraphs 8 and 9 hereof, and each of them, occurring in connection with the operations of the Respondent set forth in paragraphs 2 and 3 hereof, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

14. The acts of the Respondent set forth in paragraphs 8 and 9 hereof, and each of them as specified, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3) and (5) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Thirteenth Region, on this 26th day of October 1954, issues this Complaint against Kohler Co., a corporation, the Respondent herein.

Dated at Chicago, Illinois, this 26th day of October 1954.

Ross M. Madden,
Regional Director,
Thirteenth Region,
176 West Adams Street,
Chicago 3, Illinois.

COMPLAINT AS AMENDED

(Title and Venue same)

It having been charged by Local 833, UAW CIO, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, hereinafter referred to as the Union, that Kohler Co. a corporation, hereinafter called the Respondent, has engaged in and is now engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter called the Respondent, has engaged in and is now engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter called the Act, the General Counsel of the National Labor Relations Board, hereinafter referred to respectively as the General Counsel and the Board, on behalf of the Board, by the Regional Director for the Thirteenth Region, designated by the Board's Rules and Regulations, Series 6, as amended, hereby issues this Complaint and alleges the following:

1. A copy of the charge was duly served upon the Respondent on July 13, 1954; a copy of the first amended charge was duly served upon the Respondent on October 5, 1954; and a copy of the second amended charge was duly served upon the Respondent on October 16, 1954.

2. The Respondent is now and at all times material herein has been a corporation duly organized and existing by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at Kohler, Wisconsin, and with offices located in the States of Massachusetts, Illinois, Ohio, Michigan, Texas, California, Minne-

sota, New Jersey, New York, Pennsylvania, Missouri, Oregon, and in London, England. It is engaged in the manufacture and sale of plumbing fixtures, heating equipment, electrical appliances, air cooled engines and precision parts. Its principal plant for the manufacture of the foregoing products is located in Kohler, Wisconsin, which plant is hereinafter referred to as the Plant.

3. The Respondent in the course, conduct and operation of its business at all times material herein, has continuously caused materials used by it in its business to be purchased and transported in interstate commerce directly to the Plant of Kohler, Wisconsin, from and through States of the United States other than the State of Wisconsin. During the year 1953, the value of such materials was in excess of $1,000,000.

Respondent in the course, conduct and operations of its business at all times material herein, has continuously caused quantities of its products manufactured in the Plant to be sold, shipped and transported in interstate commerce from the Plant in Kohler, Wisconsin, into and through States of the United States other than the State of Wisconsin.

During the year 1953, the value of such products was in excess of $1,000,000.

4. Respondent is and at all times material herein has been engaged in commerce, and its operations affect and have affected commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Union is, and at all times material herein, has been a labor organization within the meaning of Section 2 (5) of the Act.

6. All production and maintenance employees of the Respondent's Kohler, Wisconsin plant, including shop office stenographers, American Club employees, all employees described in the October 23, 1950 Supplement "B" of the contract executed on August 31, 1950 between Respondent and the Kohler Workers' Association and all employees described in Supplement "F" of the contract, including employees doing experimental work in the development department, but excluding general office and clerical employees, draftsmen, technicians, clerks in the medical department, employees in the employment department, doctors, dentists, nurses, engineers, employees in the chemical and physical laboratory, confidential employees, watchmen, guards and supervisors as defined in the Act, constitute, and at all times material herein have constituted a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (a) and (b) of the Act, which appropriate unit is hereinafter referred to as the Unit.

7. On June 10 and 11, 1952, pursuant to a Stipulation for Certification upon Consent Election in Cases 13-RN-127 and 13-RC-2673, a majority of the employees in the Unit designated the Union as their representative for the purposes of collective bargaining with the Respondent. The Union at all times since those dates, by virtue of Section 9 (c) of the Act, has been and is now the exclusive bargaining representative of all employees in the Unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment.

7A. By the commission of unfair labor practices on and before April 5, 1954, as set out in sub-paragraphs 9(c) and 9(f) hereof the Respondent provoked and caused the

Union to go on strike, and by unfair labor practices committed on April 5, 1954 and thereafter as set out in paragraphs 8 and 9 hereof (references to each including all subparagraphs) Respondent caused the said strike to be continued and prolonged continuously at all times thereafter.

8 (a) Respondent by its officers, agents and representatives, while engaged in the course and conduct of its business at the Plant, on or about July 1, 1954 discriminatorily discharged the following employees:

(Names of 52 employees omitted.)

and at all times thereafter and to the date hereof has discriminatorily failed and refused and continues to fail and refuse to reinstate the above employees, or any of them, all for the reason that they and each of them had joined or assisted the Union, or had otherwise engaged in concerted activities for the purpose of collective bargaining or other mutual aid and protection.

(b) In and about the month of December, 1954, Respondent discriminatorily served notices of eviction upon the following striking employees, and upon each of them, residing in premises owned and maintained by the Respondent, for the reason that each of them had joined or assisted the Union:

Henry Arnoldi, Carl Faas, Ervin Siech, Peter Gasser, Frank Novak, John Siech, and Walter Siech.

(c) On or before January 1, 1955, Respondent discriminatorily evicted its employees, Ervin Siech, John Siech and Walter Siech, and on or about January 1, 1955, discriminatorily evicted employees Peter Gasser and Frank Novak from premises in which they resided and which were

owned and maintained by the Respondent for the reason that each of said employees had joined or assisted the Union.

(d) Respondent by its officers, agents and representatives while engaged in the course and conduct of its business at the Plant, on or about March 1, 1955, discriminatorily discharged the following employees:

(Names of 78 employees omitted.)

and at all times thereafter and to the date hereof has discriminatorily failed and refused and continues to fail and refuse to reinstate the above employees, or any of them, all for the reason that they, and each of them, had joined or assisted the Union, engaged in union activities, or had otherwise engaged in concerted activities for the purpose of collective bargaining for their mutual aid or protection.

9. Respondent by its officers, agents and representatives has failed and refused and continues to fail and refuse to bargain with the Union by engaging in the following acts:

(a) On or about April 5, 1954, the Respondent put into effect a wage increase without any negotiation with, consultation with or notice to the union, the exclusive representative of the employees in the Unit;

(b) On or about June 29, 1954, the Respondent broke off bargaining negotiations with the Union, refused to continue to engage in such negotiations and refused to meet with the Union;

(c) On or about July 1, 1954, Respondent discharged the employees of the shell department who were out on strike and transferred the employees of the shell department who were not on strike to other

departments of the Respondent, all this without negotiation with, consultation with, or prior notification to the Union, the exclusive bargaining representative of the employees in the Unit;

(d) On or about August 18, 1954, Respondent broke off bargaining negotiations with the Union, refused to continue to engage in such negotiations, and refused to meet with the Union.

(e) On or about January 20, 1954 and February 6, 1954 and thereafter, Respondent refused to give, or unreasonably delayed giving to the Union, information on pay rates of employees in the Unit which had been requested by the Union.

(f) From February 1954 to date, the Respondent engaged in a course of surface bargaining with the Union, although requested by the Union at all such times to engage in genuine collective bargaining, in that Respondent unreasonably delayed and interrupted negotiations, participated in negotiations with the adamant purpose of undermining the status of the Union as the bargaining representative of the employees in the Unit, and demonstrated an irrevocable determination to frustrate and defeat the statutory goals of collective bargaining as defined in Section 8(d) of the Act.

(g) On or about February 21 and March 1, 1955, Respondent failed and refused to bargain with the Union, upon request of the Union, with respect to the identity of employees whom the Company considered ineligible for reinstatement upon termination of the strike and failed and refused to bargain with the Union concerning the employment status of said employees at a time when the question of such employ-

ment status constituted a necessary incident to the settlement of the existing strike; and since that time Respondent has failed and refused, and continues to fail and refuse to bargain with the Union concerning such matters.

(h) Respondent, in response to a request by the Union to bargain concerning the employees Respondent considered as having engaged in violence, retaliated by discriminatorily discharging the employees set forth in paragraph 8 (d) above.

10. By the acts set forth in paragraphs 8 and 9 (reference to each including all subparagraphs) hereof and by each of them, Respondent has failed and refused and continues to fail and refuse to bargain with the Union, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

11. By the acts set forth in paragraph 8 hereof, and by each of them, the Respondent did discriminate and is discriminating regarding the hire, tenure, terms and conditions of employment of its employees and did thereby discourage and is thereby discouraging membership in the Union and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

12. By the acts set forth in paragraphs 8 and 9, and by each of them, Respondent did interfere with, restrain, coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

13. The acts of the Respondent set forth in paragraphs 8 and 9 hereof, and each of them, occurring in connection with the operations of the Respondent set forth in paragraphs 2 and 3 hereof, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

14. The acts of the Respondent set forth in paragraphs 8 and 9 hereof, and each of them as specified, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a)(1), (3) and (5) and Section 2 (6) and (7) of the Act.

AMENDED ANSWER TO AMENDMENTS ENLARGING COMPLAINT

(Title and Venue same)

Now comes Kohler Co., Respondent herein, by William F. Howe and Lyman C. Conger, its attorneys, and for amended answer to "Amendments Enlarging Complaint" issued herein by Ross M. Madden, Regional Director, Thirteenth Region, National Labor Relations Board, on the third day of December, 1954, admits, denies, alleges and submits as follows:

1. Denies the allegations of added sub-paragraphs (e) and (f) of paragraph 9 of the amended complaint.

Further alleges that the union was not bargaining in good faith in that beginning April 5, 1954, and continuing to date it engaged in, supported, urged and fostered coercive and illegal conduct including interfering by force, threats, intimidation and massed pickets with persons desiring to pursue lawful work and employment for the Re-

spondent, attempting by such means to prevent lawful work or employment by persons desiring to work for the Respondent; obstructing and interfering by massed pickets and by physical obstructions with the free and lawful use of public streets and with the free and lawful use of entrances to and driveways leading to the plant of respondent; assaulting persons desiring to pursue their lawful work for Respondent, threatening them with physical injury, picketing their homes, following and intimidating them on foot and in vehicles, subjecting them to harassing telephone calls, causing injury and damage to their homes and other property and to their persons, and by similar acts and conduct all with the intent to force Respondent to capitulate to the union's demands as the price of securing discontinuance of said coercive and illegal conduct, and accompanied by repeated statements by representatives of the union that Respondent could obtain relief from the said illegal and coercive conduct by signing a contract satisfactory to the union. (Italics added.)

2. Denies that Respondent has failed and refused or continues to fail and refuse to bargain with the union or has engaged or is engaging in any unfair labor practices within the meaning of Section 8 (a) (5) of the Labor Management Relations Act.

3. Denies that Respondent has discriminated or is discriminating regarding the hire, tenure, terms and conditions of employment of its employees within the meaning of Section 8 (a) (3) of said Act.

4. Denies that Respondent has interfered with, restrained or coerced, or is interfering with, restraining or coercing its employees in the exercise of their rights guaranteed in Section 7 of said Act.

5. Denies that the acts of Respondent alleged in the complaint, as amended, or any acts of Respondent have tended or tend to lead to labor disputes, burden or obstruct commerce or the free flow of commerce.

6. Denies that the acts of Respondent set forth in paragraphs 8 and 9 of the complaint, as amended, or any acts of Respondent constitute unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1), (3) and (5) or Section 2 (6) and (7) of the Labor Management Relations Act.

This amended answer is filed in view of the "Memorandum and Order on Motion of the General Counsel to Strike" and the "Memorandum and Order on Respondent's Motion to Strike Certain Allegations of Amendments Enlarging Complaint" both issued by the Trial Examiner on the 17th day of December 1954; the "Order on Motion of the General Counsel to Strike" issued by the Trial Examiner on November 23, 1954, and the "Order" issued by Frank M. Kleiler, Executive Secretary by direction of the Board December 9, 1954.

In view of said rulings the affirmative defense presented in that part of Respondent's original answer following paragraph 13 thereof is not re-presented herein for the reason that it has been ruled upon. Its omission from this answer is without any intent to waive said defense,

concede the correctness of the rulings thereon, nor waive any right of review or appeal from said rulings.

Respectfully submitted,

Kohler Co., Respondent,

By: William F. Howe /s/
Lyman C. Conger,
Attorneys.

Dated: December 22, 1954

William F. Howe,
Gall, Lane and Howe,
401 Commonwealth Building,
Washington 6, D. C.

Lyman C. Conger,
c/o Kohler Co.,
Kohler, Wis.

State of Wisconsin,
County of Sheboygan—ss.

L. L. Smith, being first duly sworn, on oath says that he is the Vice President of Kohler Co., a corporation, respondent in the above entitled action, that he has read the foregoing answer and that the same is true to his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

L. L. Smith.

Subscribed and sworn to before me this 22nd day of December, 1954.

Edward J. Hammer,
Notary Public, Sheboygan County, Wisconsin.
My commission expires November 25, 1956.

AMENDED ANSWER FOR KOHLER CO., RESPONDENT

(Title and Venue same)

Now comes Kohler Co., Respondent, and answering the complaint, as amended December 3, 1954, and May 27, 1955:

(1) Admits the allegations of paragraphs numbered 1, 2, 3, 4 and 5 of the complaint.

(2) Admits that on February 26, 1951, in case No. 13-RC-1506, (93 NLRB 398), the National Labor Relations Board prescribed the bargaining unit for employees of Respondent which said designation has never been altered or revoked by said Board.

(3) Admits that on June 10 and 11, 1952, in cases Nos. 13-RM-127 and 13-RC-2673 a majority of the employees in the unit specified in paragraph 6 of the complaint designated the Union as their representative for the purposes of collective bargaining; and is without knowledge sufficient to plead to the allegations in paragraph numbered 7 of the complaint that at all times since such dates the Union has been, and now is, the exclusive bargaining representative of all employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment.

(4) Denies all of the allegations of paragraph numbered 7A of the complaint.

(5) Denies all of the allegations of paragraph numbered 8(a) of the complaint; and alleges that the employees listed in said paragraph numbered 8(a) of the complaint were temporary employees, hired for the dura-

tion of a defense contract with the Government of the United States of America; that it was understood and agreed, both by the said employees and by the Union, that the employment of said employees would terminate at the termination of said defense contract; that said defense contract was terminated by the Government of the United States of America as of June 30, 1954; that upon termination of said defense contract the employment of said employees was terminated in accordance with their contract of employment; and that all said employees have been offered reemployment.

(6) Denies all of the allegations of paragraphs numbered 8(b), 8(c) and 8(d) of the complaint.

(7) Admits that on or about April 5, 1954 Respondent put a wage increase into effect; but denies the allegations of paragraph numbered 9(a) of the complaint that said wage increase was put into effect without any negotiation with, consultation with or notice to the Union; and alleges that said wage increase was not put into effect until after the Union had refused it and an impasse in bargaining had been reached and a strike had been called by the Union.

(8) Admits that on or about June 29, 1954 collective bargaining negotiations by the Respondent and the Union were broken off; and alleges an impasse in bargaining had been reached due to the intransigent attitude of the Union its its insistence on full compliance of its bargaining demand; and further alleges that the Union was fostering, supporting, and engaging in coercive and illegal conduct in connection with the strike and therefore was not bargaining in good faith.

(9) Admits that on or about July 1, 1954 Respondent terminated employment of certain employees in the Shell Department, but denies the allegations in paragraph num-

bered 9(e) of the complaint that this was done without negotiation with, consultation with, or prior notification to the Union."

(10) Admits that on or about August 18, 1954 bargaining negotiations by the Respondent and the Union were broken off; and alleges an impasse in bargaining had been reached due to the intransigent attitude of the Union and its insistence on full compliance of its bargaining demand; and further alleges that the Union was fostering, supporting, and engaging in coercive and illegal conduct in connection with the strike and therefore was not bargaining in good faith."

(11) *Denies all the allegations of paragraphs numbered 9(e) and 9(f) of the complaint; and alleges that the Union was not bargaining in good faith in that beginning April 5, 1954, and continuing to date it engaged in, supported, urged and fostered coercive and illegal conduct including interfering by force, threats, intimidation and massed pickets with persons desiring to pursue lawful work and employment for the Respondent, attempting by such means to prevent lawful work or employment by persons desiring to work for the Respondent; obstructing and interfering by massed pickets and by physical obstructions with the free and lawful use of public streets and with the free and lawful use of entrances to and driveways leading to the plan of Respondent; assaulting persons desiring to pursue their lawful work for Respondent, threatening them with physical injury, picketing their homes, following and intimidating them on foot and in vehicles, subjecting them to harassing telephone calls, causing injury and damage to their homes and other property and to their persons, and by similar acts and conduct all with the intent to force Respondent to capitulate to the Union's demands as the*

price of securing discontinuance of said coercive and illegal conduct, and accompanied by repeated statements by representatives of the Union that Respondent could obtain relief from the said illegal and coercive conduct by signing a contract satisfactory to the Union. (Italics added.)

(12) Denies all the allegations of paragraphs numbered 9 (g) and 9 (h) of the complaint.

(13) Denies all the allegations of paragraphs numbered 10, 11, 12, 13, and 14 of the complaint.

And for other and further defenses to said complaint and the whole thereof as amended, Respondent alleges as follows:

(14) That the Union did not bargain in good faith with respect to rates of pay, wages, hours of employment and other conditions of employment but engaged in a course of surface bargaining in that:

(a) Since April 5, 1954, the Union was fostering, supporting, and engaging in coercive and illegal conduct in connection with the strike and was therefore not bargaining in good faith.

(b) The Union's bargaining was not directed to the legitimate purposes of collective bargaining, i. e., arriving at an agreement as to hours, wages and working conditions but to the promotion of class warfare and hatred, that union representatives and Robert K. Burkart, who was in charge of, directed and controlled the bargaining for the Union, in particular, were motived by a strong anti-capitalist bias and a desire to perpetuate controversy, strife, friction and class warfare.

Pursuant to said motive the Union made extravagant and unrealistic demands, took unyield-

ing and intransigent position on said demands, and conducted a continuous and unremitting campaign of derogation and vilification of management.

(c) The real intent and purpose of the Union in bargaining and in the strike which it called on April 5, 1954, was not to arrive at an agreement on wages, hours, and conditions of employment but to force a change in the management of Respondent and to replace said management with a management which would be subservient to the Union's demands.

(d) The real intent and purpose of the Union in bargaining was not to arrive at an agreement on wages, hours and conditions of employment but to dictate the choice of Respondent's bargaining representative in violation of Section 8 (b) (1) (B) of the Act.

(15) That the charges were not filed in good faith by the charging party but were filed for the purpose of coercing Respondent into complying with the Union's bargaining demands and also for the purpose of delaying or preventing any election whereby the Union's status as bargaining representative might be challenged.

(16) That Robert Burkart is an officer of the UAW-CIO; that said Robert Burkart has been in charge of negotiations for the UAW-CIO; that said Robert Burkart has been in charge of the strike being called against the Respondent by the UAW-CIO; when the complaint in this case was issued by the National Labor Relations Board said Robert Burkart had not filed, and to this date has not filed

the affidavit required by Section 9 (h) of the National Labor Relations Act.

Respectfully submitted,

Kohler Co.,
Respondent,

By:.....
William F. Howe

.....
Lyman C. Conger
Attorneys.

Dated:.....

William F. Howe,
Gall, Lane and Howe,
401 Commonwealth Building,
Washington 6, D. C.

Lyman C. Conger,
c/o Kohler Co.,
Kohler, Wisconsin.

City of Washington,
District of Columbia—ss.

Lyman C. Conger, being first duly sworn, on oath says that he is the Assistant Secretary of Kohler Co., a corporation, Respondent in the above entitled action, that he has read the foregoing answer and that the same is true to his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

.....

Subscribed and sworn to before me this 2nd day of June, 1955.

.....
Notary Public.

My commission expires.....

MOTION TO AMEND ANSWER FOR KOHLER CO., RESPONDENT

(Title and Venue same)

Now comes Kohler Co., Respondent, by its attorneys and moves to amend its answer as amended July 9, 1955, as follows:

1. Change paragraph number (6) of said answer to read as follows:

"(6) Denies all of the allegations of paragraphs number 8(b), 8(c) and 8(d) of the Complaint, and alleges that the individuals named in paragraph

numbered 8(d) of the Complaint were discharged for misconduct as follows:

Engaging or participating in picketing which was illegal, intimidating or coercive.

(75 names omitted)

Engaging or participating on conduct in connection with the strike which said conduct was unlawful, intimidating or coercive—

(51 names omitted)

Engaging in, participating in, instigating, directing, controlling or ratifying and supporting picketing which was illegal, intimidating or coercive and/or engaging in, participating in, instigating, controlling or ratifying and supporting conduct in connection with the strike, which said conduct was unlawful, intimidating or coercive and/or making and publishing or participating in the making and publishing of intimidating, threatening or coercive statements—

(14 names omitted)

And for other and further defense to paragraphs 7 and 8 of the Complaint Respondent alleges that the following have, since their discharge engaged in, participated in, instigated, directed, controlled or ratified and supported conduct in connection with the strike which said conduct was unlawful, intimidating or coercive and of such character

that the purposes of the act woudl not be served by any remedial order directing their reinstatement or back pay—

(22 names omitted)

Respectfully submitted,

Kohler Co., Respondent,

By: .....
William F. Howe

.....
Lyman C. Conger

.....
Edward J. Hammer

.....
G. A. Desmond

Attorneys.

Dated: September 12, 1955.

William F. Howe,
Gall, Lane and Howe,
401 Commonwealth Building,
Washington 6, D. C.

Lyman C. Conger,
E. J. Hammer and
G. A. Desmond,
c/o Kohler Co.,
Kohler, Wisconsin.